

FILED
CLERK, U.S. DISTRICT COURT

Apr 11, 2016

CENTRAL DISTRICT OF CALIFORNIA
BY: PMC DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

JAMES GAINES,

CASE NUMBER:

CV 16-2201-SVW (JEMx)

Plaintiff

v.

KENT DENNIS,

ORDER REMANDING CASE TO
STATE COURT

Defendant(s).

The Court sua sponte **REMANDS** this action to the California Superior Court for the County of Los Angeles for lack of subject matter jurisdiction, as set forth below.

“The right of removal is entirely a creature of statute and ‘a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.’” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32 (2002) (quoting Great Northern R. Co. v. Alexander, 246 U.S. 276, 280 (1918)). Where Congress has acted to create a right of removal, those statutes are strictly construed against removal jurisdiction. Id.; Nevada v. Bank of America Corp., 672 F.3d 661, 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

Unless otherwise expressly provided by Congress, a defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir. 2013). The removing defendant bears the burden of establishing federal jurisdiction. Abrego Abrego v.

1 Dow Chemical Co., 443 F.3d 676, 682 (9th Cir. 2006); Gaus, 980 F.2d at 566-67. "Under the plain
 2 terms of § 1441(a), in order properly to remove [an] action pursuant to that provision, [the
 3 removing defendant] must demonstrate that original subject-matter jurisdiction lies in the federal
 4 courts." Syngenta Crop Protection, 537 U.S. at 33. Failure to do so requires that the case be
 5 remanded, as "[s]ubject matter jurisdiction may not be waived, and . . . the district court must
 6 remand if it lacks jurisdiction." Kelton Arms Condo. Owners Ass'n v. Homestead Ins. Co., 346
 7 F.3d 1190, 1192 (9th Cir. 2003). "If at any time before final judgment it appears that the district
 8 court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). It is
 9 "elementary that the subject matter jurisdiction of the district court is not a waivable matter and
 10 may be raised at anytime by one of the parties, by motion or in the responsive pleadings, or *sua*
 11 *sponte* by the trial or reviewing court." Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2
 12 (9th Cir. 1988).

13 From a review of the Notice of Removal and the state court records provided, it is evident
 14 that the Court lacks subject matter jurisdiction over the instant case, for the following reasons.

15 ☒ No basis for federal question jurisdiction has been identified:

16 ☒ The Complaint does not include any claim "arising under the Constitution, laws,
 17 or treaties of the United States." 28 U.S.C. § 1331.

18 ☒ Removing defendant(s) asserts that the affirmative defenses at issue give rise to
 19 federal question jurisdiction, but "the existence of federal jurisdiction depends
 20 solely on the plaintiff's claims for relief and not on anticipated defenses to those
 21 claims." ARCO Env'tl. Remediation, L.L.C. v. Dept. of Health and Env'tl. Quality,
 22 213 F.3d 1108, 1113 (9th Cir. 2000). An "affirmative defense based on federal law"
 23 does not "render[] an action brought in state court removable." Berg v. Leason, 32
 24 F.3d 422, 426 (9th Cir. 1994). A "case may not be removed to federal court on the
 25 basis of a federal defense . . . even if the defense is anticipated in the plaintiff's
 26 complaint, and even if both parties admit that the defense is the only question truly
 27 at issue in the case." Franchise Tax Bd. v. Construction Laborers Vacation Trust,
 28 463 U.S. 1, 14 (1983).

☒ The underlying action is an unlawful detainer proceeding, arising under and
 governed by the laws of the State of California.

1 ☒ Diversity jurisdiction is lacking:

2 ☒ Every defendant is not alleged to be diverse from every plaintiff. 28 U.S.C. §
3 1332(a).

4 ☒ The Complaint does not allege damages in excess of \$75,000, and removing
5 defendant(s) has not plausibly alleged that the amount in controversy requirement
6 has been met. Id.; see Dart Cherokee Basin Operating Co., LLC v. Owens, No.
7 13-719, 2014 WL 7010692, at *6 (U.S. Dec. 15, 2014).

8 ☒ The underlying unlawful detainer action is a limited civil action that does not
9 exceed \$25,000.

10 IT IS THEREFORE ORDERED that this matter be, and hereby is, REMANDED to the Superior
11 Court of California listed above, for lack of subject matter jurisdiction.

12 IT IS SO ORDERED.

13 Date: April 11, 2016



14 United States District Judge
15 STEPHEN V. WILSON
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FILED

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the

Central District of California

2016 MAR 31 PM 12:11

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

JAMES GAINES

Plaintiff/Petitioner

v.

KENT DENNIS, DOES 1 TO 10

Defendant/Respondent

Civil Action No.

CV 16-02201 SVW (JEM)

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:
Temp Security Guard

My gross pay or wages are: \$ 1,300.00, and my take-home pay or wages are: \$ 1,000.00 per
(specify pay period) month.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|--|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

na

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ 35.00 .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:
na

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:
Rent: 950 Utilities: 140, Groceries: 450

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:
N/A

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:
N/A

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 03/31/2016


Applicant's signature

Kent Dennis
Printed name